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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

ERIC JOHNSON,

Defendant and Appellant.

F068703

(Super. Ct. No. 13CM7430)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kings County. Thomas DeSantos, Judge.

Tonja R. Torres, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the Attorney General, Sacramento, California, for Plaintiff and Respondent.

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* Before Cornell, Acting P.J., Detjen, J. and Franson, J.

Eric Johnson was convicted of a single count of violation of Penal Code section 314, subdivision (1).¹ He raises several contentions, none of which has merit. Accordingly, we affirm the judgment.

FACTUAL AND PROCEDURAL SUMMARY

On the day in question, Correctional Officer Tiffany Vega was on duty in the control booth for the security housing unit (SHU) at California State Prison, Corcoran. Johnson was an inmate in the SHU. In the course of performing her duties, Vega noticed a light flickering in Johnson's unit. Vega observed Johnson through the window of his cell door. Johnson was masturbating his erect penis while looking directly at her. It appeared to Vega that Johnson was standing on his toilet so she could see his pubic area. Vega stayed out of Johnson's line of sight as much as possible. However, when her duties required her to be visible to Johnson, she could see he had not changed either his position or his activity. This went on for a period of approximately 20 minutes.

Johnson was charged with one count of violation of section 314, subdivision (1). In addition the information alleged Johnson had suffered several prior convictions for the same offense, resulting in this offense becoming a felony.

Johnson acted as his own counsel after the trial court granted his motion pursuant to *Faretta v. California* (1975) 422 U.S. 806. Johnson waived his right to a jury trial. Vega was the only witness to testify. Johnson essentially admitted his prior convictions, although the People presented evidence to support the allegation. The trial court found Johnson guilty, found the prior conviction allegation true, and sentenced him to one-third of the midterm of eight months in prison, to run consecutively to the sentence he was serving.

¹All further statutory references are to the Penal Code unless otherwise stated.

DISCUSSION

Johnson's appointed counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 asserting she failed to identify any arguable issues in this case. Johnson thereafter filed a supplemental brief challenging his conviction. We have reviewed Johnson's brief thoroughly and conclude it has no merit.

Without attempting to respond to every assertion made by Johnson, we make the following observations. The judgment was supported by substantial evidence. Vega testified at trial that she observed Johnson masturbating in a manner specifically designed to attract her attention. Johnson confuses evidence with the law. Evidence is "testimony, writings, material objects, or other things presented to the senses that are offered to prove the existence or nonexistence of a fact." (Evid. Code, § 140.)

Moreover, Vega's testimony established each element of the cause of action. Section 314 states, "Every person who willfully and lewdly, either: [¶] 1. Exposes his person, or the private parts thereof, in any public place, or in any place where there are present other persons to be offended or annoyed thereby; or, [¶] 2. Procures, counsels, or assists any person so to expose himself or take part in any model artist exhibition, or to make any other exhibition of himself to public view, or the view of any number of persons, such as is offensive to decency, or is adapted to excite to vicious or lewd thoughts or acts, is guilty of a misdemeanor." Since Johnson was accused of exposing himself in a place where Vega would be offended by his actions, his actions clearly violated the statute.

We reject Johnson's argument that the statute was violated only if he had exposed himself in a public place. Section 314 subdivision (1) unequivocally provides two methods by which a crime may be committed—either by exposing oneself in a public place *or* by exposing oneself in a place where others are present to be annoyed by the accused's actions.

We also reject Johnson's assertion that only those crimes recognized by the United States Supreme Court may be prosecuted. The California Legislature defines the crimes in this state, subject only to the requirement that the crimes do not offend the United States or California Constitutions. Section 314 does not offend either Constitution. Nor are California courts required to cite United States Supreme Court precedent when trying a case. There simply is no authority for this proposition.

Finally, we reject Johnson's claim of ineffective assistance of counsel because he chose to represent himself in the trial. (*People v. Blair* (2005) 36 Cal.4th 686, 734, overruled on other grounds in *People v. Black* (2014) 58 Cal.4th 912, 919-920.)

DISPOSITION

The judgment is affirmed.